



San Francisco Bay Conservation and Development Commission

January 8, 2008

Valerie Van Way
California State Lands Commission
100 Howe Street, Suite 100-South
Sacramento, CA 95825

SUBJECT: Notice of Preparation for Draft Environmental Report
for Marine Terminal Lease Extension to NuStar Energy, L.P.
SCH No.: 2007112108; BCDC Permit File No. 17-79; Inq. No CC.RD.6614.4

Dear Ms. Van Way:

Thank you for the opportunity to comment on the *Notice of Preparation of a Draft Environmental Impact Report for the Renewal of Lease to NuStar Energy, L.P.* (NOP). Although the San Francisco Bay Conservation and Development Commission (Commission) has not reviewed the document, the following are staff comments based on our review of the NOP in the context of the Commission's authority under the McAteer-Petris Act (California Government Code Sections 66600 et seq.) and the federal Coastal Zone Management Act, as well as the provisions of the Commission's *San Francisco Bay Plan* (Bay Plan). The Commission has jurisdiction over San Francisco Bay generally from the Golden Gate to the south end of the Bay and to the Sacramento River line; a shoreline band of territory extending inland 100 feet from the Bay shoreline; certain tributary waterways; salt ponds; and areas diked from the Bay and managed as wildlife refuges and duck clubs. Within the Commission's jurisdiction, any person or governmental agency wishing to place fill, to extract materials, or make any substantial change in use of any water, land or structure must first secure a permit from the Commission.

The NOP addresses the proposed 30-year extension of the lease for the wharf portion of the NuStar Energy Marine Terminal located in the Selby area of Contra Costa County. The Commission's Bay Plan contains policies on Bay resources, such as fish, other aquatic organisms and wildlife, and water quality; as well as policies on uses of the Bay and shoreline, including public access and fill for water-related development. The Commission further designates certain shoreline areas for uses that must be located on the waterfront, such as ports and other water-related industrial uses, to avoid potential filling of the Bay to accommodate water-related uses where the waterfront has been developed for uses not necessary to be at the water's edge.

The NuStar terminal, including the onshore storage tank area, is located within a water-related industry priority use area as shown on Bay Plan Map 2. The purpose of the lease extension with the State Lands Commission (SLC), to allow the marine terminal to continue in operation for an additional 30 years, would therefore be a use consistent with the Bay Plan designation.

The Draft EIR (DEIR) should discuss any known placement of fill, extraction of materials or substantial change in use of any water, land or structure that might be proposed as part of or resulting from the proposed lease extension. Such an activity would require a permit from the Commission at such time it is proposed. Additionally, the DEIR should discuss any impacts to the public's ability to reach the Bay and shoreline that might result from operational or development activities associated with the extended use of the facility.


The NOP states that in addition to the potential for general operations at the terminal to create significant effects on the environment, "that there is a reasonable possibility of an oil spill occurring from the NuStar wharf loading facilities during the proposed 30-year lease period" that also could significantly affect the environment. For these reasons, the SLC has determined that an EIR should be prepared. The staff agrees with this assessment, and looks forward to reviewing the discussion of measures designed to reduce the likelihood of such an occurrence, as well as those put in place to respond in the event of a spill incident.

The DEIR will include a section on Operational Safety/Risk of Accidents to review the potential for spills, with potential spill impacts to biological and other Bay resources addressed in individual sections of the DEIR. The NOP on page 11 references a review of past and present throughput at the terminal as well as a projection of transportation requirements for crude oil. The staff interprets this to be a discussion of changes in the intensity of activity at the terminal that may occur during the life of the lease and related potential effects to the environment, and will welcome this information. This section of the DEIR also will correctly address the adequacy of the terminal's spill contingency plan and spill response capabilities, in addition to regulatory conformance, which are of interest to the Commission pursuant to its responsibilities under the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act as well as the McAteer-Petris Act.

In previous DEIRs related to marine terminal lease extensions, the SLC has developed models of various oil spill scenarios to assess potential environmental impacts that could result during the transfer of oil and petroleum products at the wharf as well as during vessel transit, and included measures designed to reduce the risk of a spill. The staff looks forward to such important information in the forthcoming DEIR.

Thank you again for the opportunity to review the NOP for the proposed DEIR for the NuStar lease renewal. If you should have any questions, please do not hesitate to contact me at 415.352-3644 or lindas@bcd.ca.gov.

Sincerely,



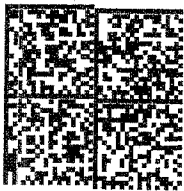
LINDA SCOURTIS
Coastal Planner

cc: Katie Shulte Joung, State Clearinghouse

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